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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/944,290	08/31/2001	Jane Elizabeth Weier	A01071 JHR/ams	1885
21898	7590	10/08/2004	EXAMINER	
ROHM AND HAAS COMPANY PATENT DEPARTMENT 100 INDEPENDENCE MALL WEST PHILADELPHIA, PA 19106-2399			YOON, TAE H	
			ART UNIT	PAPER NUMBER
			1714	

DATE MAILED: 10/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/944,290

Applicant(s)

WEIER ET AL.

Examiner

Tae H. Yoon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2 and 4-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 4-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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A proper terminal disclaimer is acknowledged, however, it is moot since application No. 09/944,289 had been abandoned.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 2, 4, 5, 21 and 22 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-17 of U.S. Patent No. 6,639,012. Although the conflicting claims are not identical, they are not patentably distinct from each other because the flow aid of claim 2 encompasses a liquid component not being water and the water of claim 6 meets the instant liquid component.

Claims, 1, 2 and 4-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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The recited "type" in "ethylene-vinylacetate ("EVA") type copolymers" in claim 1, , 6, 11 and 16 is indefinite and cancellation is suggested. Claim 4 is confusing since it improperly broadens the scope of the claim 1 wherein at least 5 weight percent of water is recited.

The recited "the liquid component comprises at least 5 weight percent of water" in claim 13 is redundant in view of the amended claim 11.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2 and 6-8 are rejected under 35 U.S.C. 103(a) as obvious over Espiard et al (US 6,245,848).

The instant invention further recites EVA type copolymers over Espiard et al.

Espiard et al teach vinyl chloride homopolymers and copolymers thereof at col. 1, lines 41-53 wherein comonomers such as vinyl acetate and olefins are taught.

It would have been obvious to one skilled in the art at the time of invention to utilize a copolymer of vinyl chloride, vinyl acetate and ethylene in Espiard et al since Espiard et al teach such modification absent showing otherwise, and said copolymer meets the instant copolymer.

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Claims 1, 2 and 6-8 are rejected under 35 U.S.C. 103(a) as obvious over Kemp (US 4,250,070).

Kemp teaches vinyl chloride homopolymers and copolymers thereof at col. 2, lines 20-35 wherein comonomers such as vinyl acetate and olefins are taught. Bimodal particle size distribution, 400-2500 μm and 80--1000 μm with a ratio of 1-20/1, is taught at col. 7, lines 3-10, and tables 9 and 14 show several examples.

The instant invention further recites EVA type copolymers over Kemp.

It would have been obvious to one skilled in the art at the time of invention to utilize a copolymer of vinyl chloride, vinyl acetate and ethylene in Kemp since Kemp teaches such modification absent showing otherwise, and said copolymer meets the instant copolymer.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tae H. Yoon whose telephone number is (571) 272-1128. The examiner can normally be reached on Mon-Thu.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tae H Yoon
Primary Examiner
Art Unit 1714

THY/October 4, 2004